up the cash. Agent Miles also testified that after she told this second story, the Claimant got into a "heated exchange" with James Williams, the DEA supervisor, who had entered the room. She demanded that she be allowed to phone an attorney and was directed to the bank of pay phones outside the office. The Claimant phoned an attorney, the DEA kept the money, and she left the airport. The Claimant was never arrested or charged with any crime arising out of these events.

As part of the follow-up investigation, Agent Miles obtained the business addresses of Mike's Import and Export USA, Inc., and went there to investigate. The two addresses listed for Mike's, were in Opa Locka, Florida. Several different businesses were listed as using both addresses. When Miles went to the first address he found that it was a modest, single family home located in a residential neighborhood. Agent Miles spoke with a man at the house who said that Claimant lived there, renting the front part of the residence from him. The second address for Mike's was also a house in a residential neighborhood.

After a bench trial, the District Court entered a forfeiture judgment in favor of the United States of America. The Claimant then filed a notice of appeal. A panel of the Eleventh Circuit Court of Appeals issued an opinion reversing the District Court's forfeiture judgment on January 22, 2003. United States v. $242,484.00, 318 F.3d 1240 (11th Cir. 2003). A timely application for rehearing was submitted by the United States of America. On March 14, 2003 the Eleventh Circuit Court of Appeal entered an order staying the January 22, 2003 opinion and also granting the United States' requests for a rehearing. On June 30, 2003, the panel denied the United States of America's petition for rehearing but withdrew the opinion of January 22, 2003 and issued a new opinion in favor of the Claimant. United States v. $242,484.00, 351 F.3d 499

(11th Cir. 2003). Thereafter, on November 20, 2003 the Eleventh Circuit denied the petition for rehearing filed by the United States of America and substituted its opinion with its previous withdrawn opinion in favor of the Claimant. Thereafter, on January 23, 2004 the majority of the judges of the Elevenths Circuit Court of Appeals vacated the previously entered panel opinion and voted in favor of a rehearing in banc. United States v. $242,484.00, 357 F.3d 1225 (11th Cir. 2004). On November 2, 2004, the Eleventh Circuit Court of Appeal issued an in banc ruling in favor of the United States of America and remanded the case to the original appellate panel to determine whether there had been a Fourth Amendment violation. The final judgment of the *en* banc ruling was issued on December 2, 2004. Thereafter, on April 18, 2005, the appellate court affirmed the District Court's decision finding that there was no Fourth Amendment violation.

REASONS FOR GRANTING THE PETITION

I

The Petition for Certiorari should be granted because the United States of America failed to present sufficient evidence to establish probable cause that the money in question was related to a narcotic offense as required by 21 U.S.C. § 881 (a)(6). Accordingly, given there was no evidence presented linking the money in question to a drug offense, the order of forfeiture entered by the District Court and the Court of Appeals violates the Fifth Amendment of the United States Constitution because it deprived the Claimant of her money without due process of law.

The money in question was seized pursuant to 21 U.S.C. § 881 (a)(6). This statute gives the United States of America the right to seize an individual's property only in

situations where:

> All **moneys**, negotiable instruments, securities, or other things of value **furnished or intended to be furnished by any person in exchange for a controlled substance** or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter. [Emphasis added]

Accordingly, pursuant to 21 U.S.C. § 881 (a) (6), the only properties that can be seized are properties that are related to illegal drug transactions.

In analyzing this issue, the Court should be mindful that forfeitures are not favored in our country and thus forfeiture should only be enforced when there is compliance with both the letter and the spirit of the law. United States v. One 1936 Model Ford V-8 De Luxe Coach, 59 S.C t. 861, 865 (1939), United States v. $38,000.00, 816 F.2d 1538, 1547 (11th Cir. 1987) Accordingly, strict compliance with the letter of the law by those seeking forfeiture is required. For these reasons, the courts should only grant forfeiture, when the circumstances are definitely sufficient to establish probable cause to tie the property being seized in a substantial way to an illegal drug transaction. United States v. $4,255,625.39, 762 F.2d 895, 903 (11th Cir. 1985), United States v. $364,960.00, 661 F.2d 319, 323 (5th Cir. Unit B 1981). It is important to note, that in the year 2000 Congress amended 21 U.S.C. § 983 and increased the burden of proof in forfeiture cases by requiring the party seeking forfeiture to proof its case by the "preponderance of the evidence". However, this

amendment is not applicable to this case because it became effective after this case occurred. Accordingly, the standard applicable to this case is that of "probable cause".

Although the probable cause standard requires less evidence than the preponderance of the evidence standard, it demands more powerful evidence than would allow someone to suspect, even reasonably to suspect, that a substantial connection exists between the pertinent property and a drug crime. Probable cause exists when "the facts warrant a reasonably cautious person" to believe that the item to be forfeited is substantially related to drug crime. United States v. Armstrong, 722 F.2d 681, 686 (11th Cir. 1984), United States v. Four Parcels of Real Property, 941 F.2d 1428, 1440 (11th Cir. 1991). It should also be noted that in Four Parcels of Real Property, (*supra*) the court stated that the standard for probable cause in forfeiture cases is "the same standard used to determine the legality of arrests, searches, and seizures in criminal law".

The probable cause inquiry is a flexible one in which the court must consider the totality of the circumstances. United States v. $121,100.00, 999F.2d 1503, 1506 (11th Cir. 1993). In evaluating the evidence of proceeds traceable to drug transactions, the courts have eschewed clinical detachment and endorsed a common sense view to the realities of normal life. United States v. Carrell, 252 F.3d 1193, 1201 (11th Cir. 2001).

When reviewing a forfeiture order, the reviewing court must accept the district court's fact finding unless clearly erroneous. United States v. Land, 221 F.3d 1194, 1199 (11th Cir. 2000 However, the determination of whether the facts as found by the district court are sufficient to establish probable cause is a question of law which requires a *de novo* review. United States v. $121,100.00, 999 F.2d 1503 at 1507 (11th Cir. 1993).

In this case, the facts as determined by the District Court, were insufficient to establish probable that the money in question was substantially related to a drug crime. The truth of the matter is that no evidence was presented to support this theory.

In affirming the District Court's decision, Court of Appeals gave great weight to several facts presented during trial. One of these facts was the amount of money. With regards to this particular fact, the Court of appeals noted that the Claimant was carrying 40.5 pounds of cash most of which were small bills. The Court of Appeals cited that there were over 18,000 bills in Claimant's backpack, most of which were small denominations. However, this conclusion on the part of the Court of Appeals is incorrect, because the majority of bills were 20-dollar bills. In total there were $152,960.00 in 20 dollar bills. It should also be noted that of the 18,000 bills, only 8,000 bills were one and five dollar bills. This fact tends to negate the Court of Appeals assumption that the money was connected to drugs because most bills were small denominations. Regardless, the law is clear, large amount of cash does not alone satisfy the government's burden to show probable cause. United States v. $121,100.00, 999 F.2d 1503 at 1507 (11th Cir. 1993). This Court should also note that the Ninth Circuit has held that that "any amount of money, standing alone, would probably be insufficient to establish probable cause for forfeiture." United States v. $191,910.00, 16 F.3d 1051, 1071 (9th Cir.1994), United States v. $30,060.00, 39 F.3d 1039, 1041 (9th Cir.1994), United States v. $405,089.23, 122 F.3d 1285 (9th Cir. 1997).

The fact is that is not illegal to carry cash. There are legitimate businesses that deal in heavy amounts of cash. One can assume that the money in question came from a legitimate business just as easily as the Court of Appeals assumed that the money in question came from an

illegitimate source. The bottom line is that this is all speculation, which is insufficient to establish probable cause that the money was link to illegal drug activity. In this case, there is also the possibility that the money came from some illegal operation not related to narcotics. If the money in question came from an illegal operation, such as gambling, prostitution or fencing, the money could not be forfeited because it was not derived from an illegal drug transaction. It also equally possible that the money came from a legitimate business transaction where one or both of the participants wanted to avoid paying taxes.

Another factor taken into account by the Circuit Court was that the Claimant appeared to have changed her story as to why she traveled to New York. At first the agents claimed that she traveled to New York because of a traffic accident case and later told the agents that she came to pick-up the money. It is important to note, that the agent did not disproved her story about the traffic accident case. It would have been very easy for the agents to conduct an electronic search for information about a court case pending in New York by a person named Deborah Sanford. This type of search takes seconds. Even assuming that the agents were correct in stating that the Claimant changed her story, this does not make it any more possible that the money in question came from an illegal drug transaction. It still equally as possible that the money in question came from either a legitimate source as well as an illegitimate source not related to illegal narcotic transactions.

The Court of Appeals also gave great weight to the facts that the Claimant would not or could not tell the agents the names of the people who gave her the money, the place that she received the money, or where she stayed in New York. These facts do not add anything to the issue of probable cause. Some people have better memories than others. Perhaps the Claimant is not good in remembering this type

of information. Perhaps she did not feel comfortable putting a legitimate business client on the spot. Perhaps, she did not want to put an illegitimate non-drug related business client on the spot. This is all speculation. Likewise the fact that she could not or would not reveal to the agents where she stayed in New York or why she changed her travel plans. There are numerous reasons why a person may change travel plans, especially if in New York, "the City that never sleeps". There are also many legitimate reasons why a person may not want to reveal to a stranger, let alone a government agent, where he or she stayed or did while visiting New York.

The Circuit Court of Appeal also relied on the fact that the packages of money were wrapped in cellophane-type plastic. In weighing this issue, the Circuit Court held: "The cash was also, as the district court found, sealed in a cellophane-type material." Wrapping cash in cellophane-type material is a technique known to be used by drug dealers to prevent discovery by drug-sniffing dogs."

This assumption on the part of the Court of Appeals overlooks the fact that the Claimant was taking a domestic flight from New York to Miami. Typically, passengers do not encounter drug-sniffing dogs in domestic flights. Most importantly, in this case, the Claimant carried the money in a backpack. In order to enter the boarding terminal, all passengers have to put their carry on luggage through an X-ray machine that takes a negative photo of the contents of such luggage. In fact, the security personnel at the airport in New York detected the money inside Claimant's backpack. If the Claimant was concerned about the money being detected, she would not have put the money in a backpack and passed it through the X-ray machine. Perhaps she would have been better of hiding the money in her clothes. The bottom line here is that if the Claimant was concerned about the money being detected, all she had to do was to

rent a car and drive to Miami. This way she would avoided all airport security. There are also other reasons for wrapping money in plastic. The most obvious is to keep moisture out.

The original Circuit Court panel that decided the case in favor of the Claimant did not give great weight to the fact that the money was wrapped. In so holding it found that:

> Stanford never hid the fact that she was carrying currency from the law officers; when asked, she told the DEA agents that she was carrying cash. Had [Claimant] **actively attempted to hide the money from the authorities, the wrapping might be of more influence. But in this case, we cannot say that the currency being wrapped to conceal its presence indicates a connection to narcotics transactions as required by the statute. While we recognize that the manner of concealment and transportation, taken together, is probative and may raise suspicion about the source of the cash, we cannot ignore the weakness of the circumstantial evidence at issue here.** [Emphasis added]

By her actions, it was obvious that the Claimant did not attempt to conceal the money. Accordingly, the Court of Appeals should not have given great weight to this factor.

In addition, the Circuit Court's assumption that that cellophane is used by drug dealers to wrap their money in order to conceal the scent of narcotics is even weaker when viewed alongside the fact that a very high percentage of the currency in the United States is contaminated with the scent of narcotics. United States v. $506,231.00, 125 F.3d 442, 453 (7th Cir. 1997). It should be noted that other courts have typically found that narcotics-detection dog alerts was

not a very significant factor. In United States v. $506,231.00, 125 F.3d 442, 453 (7th Cir. 1997), the court refusing to take seriously the results of a dog alert because it found that at least one-third — or as much as 96% — of currency in the United States is contaminated with cocaine. Another case worth noting is that of Muhammed v. Drug Enforcement Agency, Asset Forfeiture Unit, 92 F.3d 648, 653 (8th Cir. 1996). In Muhammed, (supra) the court concluding that a dog alert is "virtually meaningless" because "an extremely high percentage of all cash in circulation in America today is contaminated with drug-residue". In United States v. $5,000.00, 40 F.3d 846, 849-50 (6th Cir. 1994) the court also found that the value of a dog alert is "minimal" because 70% to 97% of currency in the United States is "so thoroughly corrupted" with cocaine. Since most of the currency in the United States is contaminated with drugs, all individuals, not just drug dealers, may be motivated to wrap their money in plastic in order to avoid detection by a drug- sniffing police dog.

Ironically, the Circuit Court in this case gave great weight to the fact that the police dog, Rambo, alerted to Claimant's backpack. In fact, the Court of Appeals gave greater weight to the dog alerting than did the District Court:

> The district court found that: "All else being equal, however, **the money upon which a narcotics dog `alerts' is more likely to have come into contact with narcotics at some time in the fairly recent past than money upon which a drug dog does not alert.**" Concerned about statements in opinions from other circuits deprecating the probative value of the scent of drugs on cash, the court said that "although weak, this factor is relevant here." On this record, we do not share the

district court's opinion1that the **probative value of Rambo's alert is weak**. we do agree that it is relevant. It is yet another fact weighing in favor of probable cause. [Emphasis added]

This holding is not only in direct conflict with other Circuit Courts as stated above, but it is also premised on the false assumption that if a dog alerts for narcotics the money must have come in contact with the drugs in the recent past. Ironically, the United States did not present any experts to support the so-called "recent-contact theory". The only evidence presented about the recent contact theory was a hearsay statement of Agent Cheek who testified that:

> Counsel asked Agent Cheek whether he had " learned in the course of [his] training and [his] field operations that it has come to be the case that perhaps as much as 90 percent of all bank notes in circulation" are tainted with drugs. Cheek responded: "Not 90, I have heard 80, 70, all different amounts, but the majority of U.S. currency has allegedly been tainted by narcotics." Instead of leaving well enough alone, Stanford's counsel pressed the matter, asking Cheek whether there was "any way in the world to determine the specific point in time when the bank note is passing through commerce when it picked up whatever degree of taint it supposedly had." Cheek answered that based upon his "understanding and knowledge and experience, there is a shelf life more or less of narcotics on currency." **He testified that according to what he had read and been told, "after like a week the money gets, basically gets cleansed, that there would**

> **not be enough narcotic residue on the money or a canine alert or an ion scan." Recoiling from that blow, counsel quickly got Cheek to agree with him that Cheek had no expertise and was just saying what somebody had told him.** The fact remains that no one with any expertise testified in support of Stanford's ever lasting scent, global contamination theory. There is simply no basis for that theory in the evidence presented in this case. [Emphasis added]

Is clear that the Circuit Court whimsically invented the "recent –contact theory" without any expert testimony. Most importantly, the Court's assumption that the money in questioned must have been in recent contact with narcotics is preposterous. The testimony presented at the trial was that the police dog alerted to the backpack. There was no testimony presented that the dog alerted to the money. Accordingly, it is highly probable that the backpack may have come in contact at the airport, the DEA office or at another place with an item that was contaminated with drugs. It is also equally possible that the dog alerted to a single bill that was contaminated. The truth of the matter is that the only one that knows why he alerted is Rambo. We will never know why Rambo alerted, but given the reality that most currencies in the United States are contaminated with narcotics, very little weight should have been given to this factor by the Circuit Court.

For the most part, the courts have traditionally granted forfeiture in airport cases where the individual blatantly lied to the agents and also had a criminal history of drug trafficking. One of these cases is United States v. $121,000.00, 999 F.2d 1503 (11th Cir. 1993). In $121,000.00, (*supra*), the Eleventh Circuit Court of

Appeals was faced with a situation somewhat similar to the one at bar. On March 19, 1990, Frederick Foster, appellant's decedent and predecessor as claimant to the defendant currency in this case, paid $580 in cash for a round-trip airline ticket for travel from Atlanta to New York. Foster's itinerary called for him to depart Atlanta the following morning at 9:58 a.m. He was scheduled to return later that day on a flight leaving New York at 10:52 p.m.

Soon after Foster purchased the ticket, airline officials alerted law enforcement officials about the transaction and an investigation was begun. On the morning of March 20, two agents from the Drug Enforcement Administration (DEA) approached Foster at the gate for the flight to New York. According to the agents, Foster appeared quite nervous when they interviewed him. The agents discovered that Foster's ticket bore the name "Jerry Foster." Foster told the agents that that was in fact his name. At the agents' request, however, he produced a temporary driver's license bearing his true first name, Frederick.

Suspicious that Foster was transporting narcotics or drug proceeds, the agents, without his consent, ordered Foster's luggage detained. The agents then subjected the bags to a narcotics-detection canine sniff. When the dog alerted to the presence of a controlled substance in Foster's bags and the agents learned from a criminal history check that Foster had been arrested and convicted several times for narcotics violations, they obtained a warrant to search the bags. The resulting search did not expose drugs, but did reveal the defendant $121,100.00. On the strength of these facts, the government commenced civil forfeiture proceedings pursuant to 21 U.S.C. § 881 (a) (6). In finding probable cause that the money in question, the Court gave great wait to several factors. However it concluded that the deciding factor was that the claimant had a criminal history of narcotic arrests and convictions. In so finding the court

stated: "**Finally, and critically**, [claimant], had a history of narcotics arrests and convictions. From the early 1970's through the mid-1980s, Foster was convicted of controlled substances on at least three occasion". At page 1507 [Emphasis added]

In the case at bar, the Claimant has no criminal history. In fact she has never been arrested. In addition, no one was ever arrested for any crime involving the money in question.

It is also worth noting, that unlike in the case of $121,000.00, (*supra*), the Claimant in this case did not provide a false name to the agents, allowed the agents to check her backpack and was not nervous when approached by the agents.

Arguably, the facts presented in this might induce someone to suspect that a "substantial connection" to a crime exists, however, more than suspicion is necessary; and the connection must be to drug crime, not to crime in general. For a forfeiture, the government's evidence here is insufficient to cause a reasonably cautious person to believe — to have some confidence, not just to imagine that it could be possible — that the currency was substantially connected to a drug crime.

The Court of Appeals far departed from the accepted and usual course of judicial proceedings in entering the judgment of forfeiture because there was no evidence presented to establish that there was probable cause that the money seized was connected to narcotic transactions, thus requiring the exercise of this Court's supervisory power.

II

Whether the decision of the Eleventh Circuit Court of Appeals in this case, conflicts in whole or in part with the decisions of other United States Court of Appeals, thus requiring this Court to exercise its supervisory powers.

This Court should note that there appears to be a conflict between the Eleventh Circuit Court of Appeals and other Circuit Courts with regards the issue of the currency contamination. A case that is worth noting is that of United States v. $30,060.00, 39 F.3d 1039 (9th Circuit, 1994).

In $30,060.00, (*supra*) Deputies of the Los Angeles County Sheriff's Department stopped Alexander for running a stop sign. When the deputies approached Alexander's Ford Tempo, they saw on the front passenger seat a plastic bag filled with money. The money was arranged in $1,000 stacks bound by rubber bands; the bills included denominations of $5, $10, $20, $50, and $100. It is unclear whether the deputies removed the plastic bag from the seat. While still at the scene, they called for a narcotics detection dog. The dog positively alerted to the bag of money, indicating the presence of the scent of a controlled substance. The deputies searched Alexander and his car for drugs, but found none. After reading Alexander his rights, the deputies questioned him about the money. Alexander stated: (1) the bag contained $30,000; (2) he was a partner with Dave Tucker and had earned the money by working at Tucker's Cafe; (3) he had no documentation to show how he had earned the money nor a bank account where he kept the money; and (4) he currently worked at a store named Jim Dandy's Liquor. Thereafter, Alexander was taken into custody and charged with violating Cal. Health and Safety Code Sec. 11352, an offense involving a controlled substance.

Back at the station, the deputies attempted to verify

Alexander's statements. The money was counted and it totaled $30,060. The deputies called Dave Tucker at a number provided by Alexander. Tucker said that Alexander was his daughter's boyfriend and had no connection to Tucker's Cafe. They also called Steve Lee of Jim Dandy's Liquor who stated that Alexander no longer worked at the liquor store.

All charges against Alexander were eventually dismissed. The Federal Bureau of Investigation adopted the seizure, however, and the federal government sought to forfeit Alexander's money as drug money under 21 U.S.C. Sec. 881(a)(6). Alexander responded that the seizure was illegal and moved to dismiss the government's complaint and to suppress evidence derived from the search of his car. The district court denied Alexander's motion. Alexander sought a writ of mandamus from the Ninth Circuit, but the writ was denied.

Alexander next moved for summary judgment. After briefing and oral argument on the motion, the district court granted summary judgment in favor of Alexander, concluding the above facts were insufficient to establish probable cause that the money was connected to drugs as required to warrant forfeiture under 21 U.S.C. Sec. 881(a)(6). The government filed a timely notice of appeal, and the district court stayed execution of the judgment pending the government's appeal. In affirming the District Court's decision, the Ninth Circuit Court of Appeals examined the issue of the currency contamination. In so doing it found that:

> We have previously found such an alert to be "strong evidence" when making a probable cause determination. United States v. $215,300 U.S. Currency, 882 F.2d 417, 419 (9th Cir.1989), cert. denied, 497 U.S. 1005 (1990). **In recent years, however, subsequent courts, including our**

own, have questioned the probative value of positive dog alerts due to the contamination of America's paper money supply with narcotics residue. United States v. $191,910, 16 F.3d 1051, 1062 n.21 (9th Cir.1994 **(expressing concern that currency contamination may affect the probative value of a narcotics detection dog's positive alert in currency forfeiture cases);** United States v. $53,082, 985 F.2d 245, 250 n. 5 (6th Cir.1993); United States v. $639,558, 955 F.2d 712, 714 n. 2 (D.C.Cir.1992) Jones v. Drug Enforcement Admin., 819 F.Supp. 698, 719-21 (M.D.Tenn.1993) **(rejecting the probative value of a narcotics detection dog's positive alert to seized currency on the basis of evidence of widespread currency contamination);** United States v. $80,760, 781 F.Supp. 462, 475-76 (N.D.Texas 1991), aff'd, 978 F.2d 709 (5th Cir.1992).[Emphasis added]

Other Courts have also rejected the probative of the positive alerts to narcotics in seized currency by police dogs. United States v. $506,231.00, 125 F.3d 442, 453 (7th Cir. 1997). It should be noted that other courts have typically found that narcotics-detection dog's alert was not a very significant factor. In United States v. $506,231.00, 125 F.3d 442, 453 (7th Cir. 1997), the court refusing to take seriously the results of a dog alert because at it found that at least one-third — or as much as 96% — of currency in the United States is contaminated with cocaine. Another case worth noting is that of Muhammed v. Drug Enforcement Agency, Asset Forfeiture Unit, 92 F.3d 648, 653 (8th Cir. 1996). In Muhammed, (supra) the court concluding that a dog alert is "virtually meaningless" because "an extremely high percentage of all cash in

circulation in America today is contaminated with drug-residue". In United States v. $5,000.00, 40 F.3d 846, 849-50 (6th Cir. 1994) the court also found that the value of a dog alert is "minimal" because 70% to 97% of currency in the United States is "so thoroughly corrupted" with cocaine.

These decisions are in direct conflict with the ruling in this case where the Circuit Court of Appeal gave great weight to the fact that Rambo, a police-sniffing dog, alerted to the backpack that the Claimant was carrying.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-16485

D.C. DOCKET No. 99-01259 CV-DMM

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

Versus

$242,484.00,

Defendant,

DEBORAH STANFORD, individually and as President, Director, and Stockholder of Mike's Import & Export, U.S.A., a Florida Corporation,

Claimant-Appellant,

Appeal from the United States District Court for the Southern District of Florida

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(April 18,2005)

Before EDMONDSON, Chief Judge, ANDERSON, Circuit Judge, and POGUE*, Judge.

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*Honorable Donald C. Pogue, Judge, United States Court of International Trade, sitting by designation.

PER CURIAM:

This case comes before us on remand from this Court's en banc decision in United States v.$242,484.00 . 389 F.3d 1149, 1168 (11th Cir.2004). The case originally arose out of a civil forfeiture action applying 21 U.S.C.& 881 (a) (6) –the version in effect before the 2000 amendments – which provided for the forfeiture of money linked to drug crimes. The district court ordered the forfeiture of $242,494.00 seized from claimant-appellant Deborah Stanford. Stanford appealed, arguing that her Fourth Amendment rights were violated and that the government lacked probable cause to seize the defendant currency. A panel of this Court agreed that the circumstances were insufficient to establish probable cause and ordered the currency returned to Stanford. The panel's order was vacated when this Court decided to rehear the case en banc.

The en banc court affirmed the district court's ruling that the government established probable cause for the forfeiture of the defendant currency and remanded any remaining issues to the panel. We now consider whether Stanford's Fourth Amendment rights were violated in the course of the encounter that led to the seizure of the defendant currency. Because we conclude that Stanford consented to the initial interview with the DEA agents and to the agents' request that she accompany them to an office for further questioning, we hold that no constitutional violation occurred and affirm the district court's forfeiture order.

I. BACKGROUND

On December 14,1998, Deborah Stanford flew from New York City to Miami, Florida. When airport personnel in New York questioned her about the contents of two packages in her backpack, Stanford became belligerent. She eventually

removed the packages and revealed that they contained large amounts of currency. One worker attempted to confiscate the currency, but was countermanded by a superior.

Although Stanford was allowed to board her flight with the currency, an airport security worker approached Drug enforcement Agency Agent Bradley Cheek and told him what had happened. Agent Cheek relayed the information to DEA Special Agent Kenneth Miles at the Miami International Airport. He described Stanford and said that she was carrying a large amount of cash in her backpack. Agents Miles and John Eric Johnson then went to the gate where Stanford's plane was to arrive.

When Stanford exited her plane in Miami, the two agents recognized her based on Agent Cheek's description. They approached Stanford and showed their DEA credentials. They told her that their job was to contact people and seek their help in combating drug flow, asked her if she would talk to them and consent to a search of her baggage, and advised her that she was not required to do so. She consented. The agents asked to see her plane ticket and driver's license, and she complied. The agents confirmed that the names on the ticket and license matched and returned the items to Stanford. Agent Miles asked if Stanford was carrying any contraband or large sums of money, and she replied that she was carrying "about two". When asked what she meant but this, Stanford told Agent Miles that she had "about two hundred thousand" dollars in her backpack. Agent Miles asked to see the contents of the backpack, and Stanford consented. Inside the pack, Agent Miles found two large packages, one wrapped in black cellophane and one wrapped in plastic cellophane inside a Christmas shopping bag. He asked Stanford's permission to poke holes in the wrapping, and she consented. Each package contained large, non-uniform bundles of currency.

At that point, Agent Miles asked Stanford to

accompany the agents to the airport's DEA office. Stanford agreed. Agent Miles testified that she answered "sure". She then walked with the agents to the office, with Agent Miles carrying the backpack containing the currency. Agent Johnson walked in front of Stanford, while Agent Miles trailed slightly behind her. Neither agent touched Stanford, nor did they display any weapon.

When the group reached the DEA office, Agent Miles proceeded to question Stanford about the reason for her trip to New York and the source of the currency. Stanford said that she had gone to New York for a civil trial arising out a traffic accident she had been involved in ten years earlier, but she was unable to produce any documents relating to the court case. As for the source of the currency, Stanford claimed that her brother contacted her while she was in New York and asked her to pick up some money for Mike's Import & Export USA, Inc.(Mike's"), a business with which both siblings were associated[1]. Stanford could not provide the names of the individuals who gave her the money or tell the agents where the transfer took place, nor could she provide any documentation connecting the money to Mike's. When pressed, she claimed that her brother had given her directions and told her that the people with the money would know her.

The agents also made further inquiries about the amount of cash that Stanford was carrying. After initially declaring that she had "about two hundred thousand" dollars, Stanford finally told the agents that the black cellophane-

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[1] While Stanford was explaining how she came to possess the currency, DEA agents were using a computer terminal in the office to check on the information she provided. The DEA's Narcotics and Dangerous Drug Information System (NADDIS) returned a hit for "Mike's Import and Export NV," a company with a business address in Opa Locka, Florida. The report stated that the business, which had aliases of "Mike's Electronics Import and Export" and "Mike's Import Export," was "Possible [sic] utilized for money laundering.

wrapped package contained $79,900.00 and the Christmas-wrapped package contained $162,750.00, for a total of $242,650.00. Stanford was off by only $166.00, as the package contained a total of$242,650.00. Stanford was off by only $166.00,as the packages contained a total of $242,484.00. The money was bundled according to denomination, but the bundles contained different amounts, were of varying thickness, and did not bear the binding of any bank or financial institution.

During the airport interview, "Rambo," a narcotics-detection dog, was brought into the office. Stanford's backpack was placed in a hallway with several other bags of similar size and shape, and Rambo was allowed to inspect them. He alerted to Stanford's backpack. At the point, Stanford had a heated exchange with the DEA supervisor who had just arrived. She then left the room to contact an attorney and ultimately left the airport. The DEA retained the backpack containing the currency. Stanford was never arrested or charged with any crime arising out of these events.

II .DISCUSSION

Stanford argues that her encounter with DEA agents at the Miami Airport constituted a seizure in violation of her Fourth Amendment rights[2]. Because violation of the Fourth Amendment triggers the exclusionary rule, Stanford argues that the district court should have excluded from the government 's case-in-chief all evidence gathered during the airport encounter. See One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania ,380 U.S.692, 702, 85 S.Ct.1246, 1251 (1965) (holding that the Fourth Amendment's exclusionary rule applies in civil forfeiture

[2] Stanford also argues that the district court improperly struck Mike's Import & Exports, U.S.A., as a claimant. After oral argument and careful consideration, we reject that argument without need for further discussion.

cases). The district court denied Stanford's motion to suppress the evidence from the airport encounter after concluding that she was not "seized" within the meaning of the Fourth Amendment.

Review of a district court's denial of a motion to suppress evidence is a mixed question of law and fact. United States v. Holloway, 290 F.3d 1331, 1334 (11th Cir.2002). We review the district court's findings of fact under the clearly erroneous standard and its application of the law de novo. Id. In reviewing the district court's ruling, this Court must construe the facts in the light most favorable to the party prevailing below, which, in this case, is the government. Id.

Not every encounter between law enforcement officers and individuals constitutes a seizure within the meaning of the Fourth Amendment. United States v. Alvarez-Sanchez,774 F.2d 1036,1040 (11th Cir. 1985). The crucial inquiry in deciding whether a given encounter implicates the Fourth Amendment is determining whether, considering all the circumstances, a reasonable person would have believed that she was not free to leave if she refused to answer an officer's questions. Id.

In this case, we have no trouble concluding that no seizure occurred during the initial encounter between Stanford and the DEA agents in the concourse. There is no evidence that Agents Miles and Johnson used any force or coercion. They were not in uniform, they did not touch Stanford or block her path, and they did not display any weapons. They simply approached Stanford, identified themselves as DEA agents, and asked her a few questions. They did request to see her ticket and driver's license, but returned the items almost immediately. Moreover, she was expressly advised that she was not required to cooperate. Because nothing in this initial encounter would lead a reasonable person to believe that she was not free to leave,

the district court correctly found that no seizure occurred. See United States v. Mendenhall, 446 U.S.544, 555, 100 S.Ct.1870,1878 (1980).

We next consider the agents' request that Stanford accompany them to their office. "An officer's asking an individual to accompany him or her to an office is an intrusive request that raises a presumption that the individual would not feel free to leave absent exceptionally clear evidence of consent." United States v. Espinosa-Guerra, 805 F.2d 1502, 1507 (11th Cit.1986) (internal quotation omitted). Under such circumstances, courts should "scrutinize the evidence with care to ensure that the totality of the circumstances shows an utter absence of coercion and hence truly voluntary consent." Id.

The district court relied on several factors in finding "clear evidence" of Stanford's voluntary consent to accompany the agents to the office. It found that Agent Miles asked Stanford to go to the office rather than telling her to do so, that there was no show of force, and that the door to the interview room remained open at all times. The court further found that Stanford never asked to leave or physically attempted to do so. None of these findings are clearly erroneous.

In addition to these explicit factual findings, the district court implicitly found that Stanford actively consented to go to the office. In its opinion, the district court acknowledged that"[s]ilently following an officer almost never constitutes sufficient evidence of consent." Order at 8 (quoting Espinosa-Guerra ,805 F.2d at 1508). However, the district court found "clear evidence" that Stanford voluntarily consented to accompany the DEA agents to the office. From this finding, we can infer that the district court credited Agent Miles' testimony that Stanford said "sure" when asked if she would accompany him to the office. Like the district court's explicit factual findings, this

implied finding is not clearly erroneous[3].

The foregoing facts, when construed in the light most favorable to the government, support the district court's finding that Stanford voluntarily consented to go to the DEA office for further questioning. See Mendenhall, 446 U.S. at 557-58, 100 S.Ct. at 1879. We cannot conclude that the district court's finding of consent is clearly erroneous. Stanford was not seized within the meaning of the Fourth Amendment, and the district court's opinion is

AFFIRMED.

[3] In advancing Stanford's claim, petitioner's counsel has not sufficiently argued, or has entirely waived, any claim that other facts, such as the duration of Stanford's detention, undermined the validity of her consent or caused that consent to expire.

(2) Supreme Court, U.S.
FILED

05-248 JUL 6 - 2005

No. OFFICE OF THE CLERK

In the

Supreme Court of the United States

$242,484.00, Petitioner

v.

United States of America,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

SUPPLEMENTAL APPENDIX

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UNITED STATES
DISTRICT COURT
SOUTHERN
DISTRICT OF
FLORIDA

CASE No.99-1259-CIV-MIDDLEBROOKS

UNITED STATES OF AMERICA

Plaintiff,

v.

TWO HUNDRED FORTY-TWO
THOUSAND FOUR HUNDRED
EIGHTY-FOUR DOLLARS, in
United States Currency
($242,484.00),

Defendant,

DEBORAH STANFORD,
Individually and as President,
Director and Stockholder of
MIKE'S IMPORT & EXPORT,
U.S.A., INC., a Florida corporation,

Claimants.

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MEMORANDUM OPINION

THIS CASE came before the Court upon consent of the parties to forego a trial by jury and submit to a bench trial. Trial was held in Miami, Florida, on September 25-27,2001. The case involves civil forfeiture proceedings brought in May of 1999 by the United States pursuant to 21 U.S.C.&881.

I.Facts

The facts of this case are as follows. On December 10,1998, the claimant, Deborah Stanford, flew from Miami, Florida to New York, New York on a Tower Air regularly scheduled flight. The claimant purchased the $93.00 round-trip ticket with cash on December 8,2001, from Palmetto Travel Service. Originally, Ms. Stanford was scheduled to return to Miami on December 12,2001, although for reasons unclear she was a no-show for the original return flight, calling the airline after-the-fact and changing the return date to December 13. Ms. Stanford altered the return date one more time, and finally settled on a Tower Air flight bound for Miami on the morning of December 14,2001.

On the morning of the flight, which left from New York's John F. Kennedy Airport, Ms. Stanford was required, as at all airports in this country, to pass through a security checkpoint before entering the gate area. Upon passing Ms. Stanford's carry-on luggage through the x-ray machine, airport personnel noticed that the bag-a-school-type-backpack-contained two large packages. Ms. Stanford initially refused the airport personnel's requests to verify the contents of the bag, although she then told the worker that the packages contained currency. Ms. Stanford became belligerent upon being questioned as to the bag's contents. One of the airport workers seized the bag, further angering Ms. Stanford. Soon thereafter, the worker's supervisor to arrive on the scene. The supervisor informed the worker that he or she[1] had no authority to effect such a seizure, whereupon the bag was returned to Ms. Stanford. Ms. Stanford then boarded the flight for Miami.

The airport worker then called DEA Agent Brad Cheeks, a member of the JFK Airport Interdiction Unit, and related to him these events. Agent Cheeks proceeded to place a call to DEA Special Agent Kenneth Miles, in Miami International Airport, relaying the information he had received

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[1] **The identity of this airport worker is unknown, to the Court and apparently to the parties as well.**

from the airport worker. Agent Cheeks's description of the woman, whom he himself had never seen, was of a tall Black female carrying two packages containing a large amount of currency in a carry-on bag. Agent Miles, accompanied by Agent John Eric Johnson and three or four other members of the Miami airport DEA unit,[2] proceeded to the gate where Tower Air

flight 41 was scheduled to arrive at approximately 12:30 pm.

Upon that flight's deboarding, Agents Miles and Johnson noticed a woman who matched the description they had received from Agent Cheeks in New York. The two agents approached the woman, Ms. Stanford, showed her their DEA credentials, and asked her if she would speak with them.[3] When Ms. Stanford said yes, Agent Miles asked her for her plane ticket and driver's license, which she provided. The name on the ticket matched the name on the Florida driver's license that Ms. Stanford produced. The license also

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[2] Although these agents accompanied Agents Miles and Johnson to the gate, they scattered themselves around in an attempt to cover more of the gate area. There is no indication that Ms. Stanford ever saw these other men; even if she did, they were dressed in plain clothes and therefore were effectively indistinguishable from other civilians at the gate at that time.

[3] Although both Agent Miles and Agent Johnson confronted Ms. Stanford at the gate area, testimony revealed that only Agent Miles asked her any questions.

bore Ms. Stanford's photograph. After returning the ticket and license, Agent Miles then asked Ms. Stanford the reason for her trip to New York, to which Ms. Stanford replied that she had been there for a civil trial that had arisen out of a traffic accident approximately ten years prior. Agent Miles asked Ms. Stanford whether she was carrying any contraband or large sums of currency, to which Ms. Stanford replied that she was carrying money; asked how much and she said "about two." When asked "about two" what, Ms. Stanford told Agent Miles that she had "about two hundred thousand" on her at the time. Agent Miles asked about the location of the money, and Ms. Stanford pointed to her backpack. Agent Miles asked if he could see the contents of the pack, to which Ms. Stanford consented. The inspection of the backpack revealed that it contained two large packages, one wrapped in black plastic and one wrapped in Christmas wrapping paper. Agent Miles asked consent to poke holes in the packages' wrapping, which Ms. Stanford gave.[4] Each package contained large bundles of currency sealed in a cellophane-type material.

At that point, Agent Miles asked Ms. Stanford to accompany Agent Johnson and him back to the airport's DEA office. Ms.

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[4] **Ms. Stanford denied that Agent Miles poked holes in the wrapping, although she acknowledges giving the agent consent to look into the backpack itself.**

Stanford consented. At all times Ms. Stanford remained calm and responsive to the agent's questioning. The three walked back to the DEA office, with Agent Miles carrying the bag containing the currency. Agent Johnson walked in front of Ms. Stanford, while Agent Miles walked slightly behind. Neither agent touched Ms, Stanford during this time, nor did they display any weapon.

When they arrived at the DEA airport office, the agents led Ms. Stanford into one of the rooms. In one corner of the room, Agent Scott Lamb was seated at a computer terminal. Agent Miles proceeded to question Ms. Stanford about her trip to New York and the source of the currency while Agent Johnson took notes. At this time, Ms. Stanford still had not identified the amount of the currency more than her original statement that it was "about two hundred thousand." Ms. Stanford told the agents that she had been in New York for a civil trial arising out of a traffic accident in which she had been involved, although denied that the money had anything to do with that case. She also said that she was associated with the Florida corporation of Mike's Import and Export USA, Inc.("Mike's"). She stated that while in New York, her brother [5] called her

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[5] **At trial, Ms. Stanford testified that it was her brother Wilbert, who at that time in 1998 was associated with Mike's Import and Export USA, Inc. who had called her in New York.**

and asked her to pick up the money from "some people" for Mike's. She was unable further to identify the individuals from whom she received the money, and when pressed on this issue, responded that her brother had told her that these people would get in touch with her, apparently obviating the need for her to know their names. Agent Lamb, who had been seated at the computer terminal running checks on the information given by Ms. Stanford, then handed Agent Miles a printout from the DEA's Narcotics and Dangerous Drug Information System ("NADDIS") system.[6] Claimant's Exh.

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[6] NADDIS is a clearinghouse for criminal investigations, compiling information from agencies such as the DEA, FBI, and state and local law enforcement agencies. The reliability of this NADDIS report was hotly contested at trial. Although a court is allowed to rely on inadmissible hearsay in determining the issue of probable cause in a civil forfeiture proceeding, see United States v. One parcel of Real Estate at 1012 Germantown Road, 963 F.2d 1496,1501 (11th Cir.1992), the reliability of the information must also factor into this analysis. Here, the government offered in support of its probable cause case this document, which the DEA computer terminal printed out as a result of an unknown query, inputted by an agent who did not take the stand or offer personal testimony of any sort. Further, the report lists "Mike's Import and Export NV", which is similar to but not the same as "Mike's Import and Export USA, Inc." It appears that the former is a foreign corporation, whereas the latter is the Florida corporation controlled by Ms. Stanford. Additionally, trial testimony of Agents Miles and Johnson revealed that the personal

1.The printout showed a "hit" for Mike's Import and Export NV. It listed the aliases of this company as including "Mike's Electronics Import and Export" and "Mike's Import Export", with a business address in Opa Locka, Florida. The report stated: "Possible utilized for money laundering." Ms. Stanford was not asked about this report's contents.

Further pressed on the amount of currency she was carrying, Ms. Stanford then answered that the black-wrapped package contained $79,900.00, and the Christmas-wrapped package contained $162,750.00. An official count of the money, done later at the bank pursuant to DEA policy, revealed that the exact amount was $242,484.00, $

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testimony of any sort. Further, the report lists "Mike's Import and Export NV", which is similar to but not the same as "Mike's Import and Export USA, Inc." It appears that the former is a foreign corporation, whereas the latter is the Florida corporation controlled by Ms. Stanford. Additionally, trial testimony of Agents Miles and Johnson revealed that the personal testimony of any sort. Further, the report lists "Mike's Import and Export NV", which is similar to but not the same as "Mike's Import and Export USA, Inc." It appears that the former is a foreign corporation, whereas the latter is the Florida corporation controlled by Ms. Stanford. Additionally, trial testimony of Agents Miles and Johnson revealed that the information from DEA reports, which is among that filtered into the NADDIS system, is at times "raw intelligence" information, not always thoroughly corroborated.

166.00 less than Ms. Stanford's answer's total. The money was packaged according to denomination, although the bundles contained different amounts and were of varying thicknesses. They did not bear the banding of any bank or other financial institution.

Meanwhile, aK-9 narcotics dog, Rambo, had been brought to the office by Officer Pedro Perez of the North Miami Beach Police Department. Four or five other bags were placed in next to Ms. Stanford's, and Rambo was allowed to pass in front of them. Rambo "alerted" to the presence of a narcotics smell on Ms.Stanford's backpack containing the currency.[7] Ms. Stanford then returned to the office with Agents Miles, Johnson, and Lamb. Agent Miles again questioned Ms. Stanford about the money, which she again said was related to Mike's. [8] At that point, a "heated exchange" occurred between Ms. Stanford and Mr. James Williams, the DEA supervisor, who had just entered the room. Ms. Stanford for the first time notified the

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[7] Mr. Perez testified that Rambo is trained to detect the odors of cocaine, heroin, marijuana, and methamphetamines. Rambo is a "passive alert" dog, which means that upon detecting one of these four scents, Rambo sits in front of the object. An "active alert" dog would scratch or bark upon alerting to one of the scents.

[8] At trial, Agent Miles stated that at this point, Ms. Stanford had changed her story concerning the source of the money. Agent Miles testified that originally Ms. Stanford said that she was in New York for the court case, and then later in the interview switched to claiming that she was in New York specifically to pick up the money in question.

DEA officials of her desire to phone an attorney, and she was directed to a bank of public pay phones located outside of the office. Ms. Stanford proceeded to call an attorney, the DEA kept the money, and Ms. Stanford left the airport.

Subsequent to the seizure, the DEA performed an investigation into the surrounding circumstances, including a check into Ms. Stanford's New York visit and the business history of Mike's Import and Export USA, Inc. No proceedings were ever brought against Ms. Stanford, nor was she ever arrested for any event arising from the above described happenings. At trial, the government produced records of Mike's money wire transfers occurring in December of 1998, including several transfers between New York and Miami. It is upon the above-related facts that the Court bases its decision.

II. Fourth Amendment Issues

The Claimant here pressed both in pretrial moving papers and during the trial itself that the airport encounter was in fact a seizure that was effected in violation of her rights as protected by the Fourth Amendment. A violation of this Amendment triggers the exclusionary rule, disallowing the use in the government's case-in-chief of evidence so gathered. See

One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania, 380 U.S.692,702 (1965); United States v. Premises and Real Property with Buildings, Appurtenance and Improvements at 500 Delaware Street, Tonawanda New York, 113 F.3d 310,312 n.3(2d Cir.1997) ("The Forth Amendment's exclusionary rule applies to forfeiture cases."); United States v. Six Hundred Thirty-Nine Thousand Five Hundred and Fifty-Eight Dollars ($639.558) in United States Currency, 955 F.2d 712,715 & n.5 (D.C.Cir.1992); Vance v. United States, 676 E. 2d 183, 187-88(5th Cir.1982). The question, then, turns on whether under these facts a seizure was effected so as to the Fourth Amendment's protections.

A person is "seized" within the meaning of that term as used in the Fourth Amendment if, considering the totality of the circumstances, a reasonable person would have concluded that he or she was not free to leave. This formulation of the test was first set forth by Justice Stewart in his plurality opinion in United States v. Mendenhall, 446 U.S.544.554 (1980), and subsequently adopted as the appropriate test by the Eleventh Circuit. See United States v. Berry, 670 F.2d 583, 595 (5th Cir.1982) (Unit B) (en banc).[5] There are several

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[5] **In Stein v. Reynolds Secs.,Inc.667 F.2d 33 (11th Cir.1982), the Eleventh Circuit adopted as precedent decisions of the former Unit B of the Fifth Circuit that were issued after September 30,1981.**